104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 104–285
1st Session } { Part 1

TRADE AGREEMENTS AUTHORITY ACT OF 1995

OCTOBER 20, 1995.—Ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2371]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2371) to provide trade agreements authority to the President, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Trade Agreements Authority Act of 1995".

SEC. 2. TRADE NEGOTIATING OBJECTIVES.

(a) OVERALL TRADE NEGOTIATING OBJECTIVES.—The overall trade negotiating objectives of the United States for agreements subject to the provisions of section 3 are—

(1) to obtain more open, equitable, and reciprocal market access;

(2) to obtain the reduction or elimination of barriers and other trade distorting policies and practices;

(3) to further strengthen the system of international trading disciplines and procedures;

(4) to foster economic growth and full employment in the United States and the global economy; and

(5) to develop, strengthen, and clarify rules and disciplines on restrictive or trade-distorting import and export practices.

(b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—

(1) SPECIFIC BARRIERS.—The principal negotiating objectives of the United States regarding specific trade barriers and other trade distortions are to expand competitive market opportunities for United States exports and to obtain

more open and fair conditions of trade by reducing or eliminating specific tariff and nontariff trade barriers and policies and practices of foreign governments directly related to trade that distort or impede United States imports or exports.

(2) TRADE IN SERVICES.—The principal negotiating objectives of the United States regarding trade in services are—

(A) to reduce or eliminate barriers to international trade in services, including regulatory and other barriers that deny national treatment and restrict the establishment and operations of service suppliers; and

(B) in the negotiations on financial services to be conducted under the auspices of the World Trade Organization, to secure commitments, in a wide range of commercially important industrial and developing countries, to reduce or eliminate barriers to the supply of financial services, including barriers that deny national treatment and restrictions on the establishment and operation of financial services providers, as the condition for the United States—

(i) offering commitments to provide national treatment and market access in each of the financial services subsectors; and

(ii) making such commitments on a most-favored-nation basis.

(3) FOREIGN DIRECT INVESTMENT.—The principal negotiating objective of the United States regarding foreign direct investment is to reduce or eliminate artificial or trade-distorting barriers to foreign direct investment by—

(A) reducing or eliminating exceptions to the principle of national treatment;

(B) freeing the transfer of funds relating to investments;

(C) reducing or eliminating performance requirements;

(D) affirming international legal standards for expropriation and compensation for expropriation; and

(E) providing meaningful procedures for resolving investment disputes.

(4) INTELLECTUAL PROPERTY.—The principal negotiating objectives of the United States regarding intellectual property are—

(A) to further promote adequate and effective protection of intellectual property rights, including through—

(i) accelerating the implementation globally of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act, and achieving improvements in the standards of that Agreement;

(ii) providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property;

(iii) preventing or eliminating discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights; and

(iv) providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil and criminal enforcement mechanisms; and

(B) to secure fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection.

(5) TRANSPARENCY.—The principal negotiating objective of the United States with respect to transparency is to obtain broader application of the principle of transparency through—

(A) increased public access to information regarding trade issues;

(B) clarity in the costs and benefits of trade policy actions; and

(C) the observance of open and equitable procedures in trade policy matters by parties to international trade agreements.

(c) ADHERENCE TO OBLIGATIONS UNDER URUGUAY ROUND AGREEMENTS.—In determining whether to enter into negotiations with a particular country, the President shall take into account whether that country has implemented its obligations under the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act).

(d) DEFINITION.—As used in subsection (a)(4)(B), the term "United States person" means—

(1) a United States citizen;

(2) a partnership, corporation, or other legal entity organized under the laws of the United States; and

(3) a partnership, corporation, or other legal entity that is organized under the laws of a foreign country and is controlled by entities described in paragraph (2) or United States citizens, or both.

SEC. 3. TRADE AGREEMENTS AUTHORITY.

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

(1) IN GENERAL.—Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, and objectives of this Act will be promoted thereby, the President—

(A) on or before December 15, 1999 (or December 15, 2001, if trade authorities procedures are extended under subsection (c)), may enter into trade agreements with foreign countries; and

(B) may, subject to paragraphs (2) and (3), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties,

as the President determines to be required or appropriate to carry out any such trade agreement.

(2) LIMITATIONS.—No proclamation may be made under paragraph (1) that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of the enactment of this Act) to a rate of duty which is less than 50 percent of the rate of such duty that applies on such date of enactment;

(B) reduces the rate of duty on an article over a period greater than 10 years after the first reduction that is proclaimed to carry out a trade agreement with respect to such article; or

(C) increases any rate of duty above the rate that applies on the date of the enactment of the Uruguay Round Agreements Act.

(3) AGGREGATE REDUCTION; EXEMPTION FROM STAGING.—

(A) AGGREGATE REDUCTION.—Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed under paragraph (1) to carry out such agreement with respect to such article.

(B) EXEMPTION FROM STAGING.—No staging is required under subparagraph (A) with respect to a duty reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this paragraph.

(4) ROUNDING.— If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by an amount equal to the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) OTHER LIMITATIONS.—A rate of duty reduction or increase that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction or increase is included within an implementing bill provided for under section 5 and that bill is enacted into law.

(b) AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) IN GENERAL.—Whenever the President determines that any duty or other import restriction imposed by any foreign country or the United States or any other barrier to, or other distortion of, international trade—

(A) unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy, or

(B) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect,

and that the purposes, policies, and objectives of this Act will be promoted thereby, the President may, during the period beginning on January 1, 1996, and ending on December 15, 1999 (or December 15, 2001, if trade authorities procedures are extended under subsection (c)), enter into a trade agreement with foreign countries providing for—

(i) the reduction or elimination of such duty, restriction, barrier, or other distortion, or

(ii) the prohibition of, or limitation on the imposition of, such barrier or other distortion.

(2) CONDITIONS.—A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 2 and the President satisfies the conditions set forth in section 4.

(3) BILLS QUALIFYING FOR TRADE AUTHORITIES PROCEDURES.—(A) The provisions of section 151 of the Trade Act of 1974 (in this Act referred to as ''trade authorities procedures'') apply to implementing bills (as defined in subsection (b)(1) of such section) consisting only of—

(i) a provision approving a trade agreement entered into under this subsection;

(ii) a provision approving the statement of administrative action, if any, proposed to implement such trade agreement;

(iii) provisions directly related to principal trade negotiating objectives set forth in section 2(b) achieved in such trade agreement; and

(iv) if changes in existing laws or new statutory authority is required to carry out such trade agreements, provisions necessary for the operation or impementation of such trade agreement.

(B) Notwithstanding subparagraph (A), trade authorities procedures may also apply to an implementing bill to which subparagraph (A) applies that contains the following;

(i) Provisions that define and clarify the operation and effect of the applicable trade agreement under United States law, including the relationship between Federal and State law, the preclusion of a private right of action, judicial procedures, and the establishment of administrative, consulting, and reporting mechanisms to carry out obligations of the United States under the agreement.

(ii) Provisions necessary for purposes of complying with section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 in implementing the applicable trade agreement.

(c) EXTENSION DISAPPROVAL PROCESS FOR CONGRESSIONAL TRADE AUTHORITIES PROCEDURES.—

(1) IN GENERAL.—Except as provided in section 5(b)—

(A) the trade authorities procedures apply to implementing bills submitted with respect to trade agreements entered into under subsection (b) on or before December 15, 1999; and

(B) the trade authorities procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under subsection (b) after December 15, 1999, and before December 15, 2001, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before December 15, 1999.

(2) REPORT TO CONGRESS BY THE PRESIDENT.—If the President is of the opinion that the trade authorities procedures should be extended to implementing bills described in paragraph (1)(B), the President shall submit to the Congress, not later than July 1, 1999, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under subsection (b) and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in negotiations to achieve the purposes, policies, and objectives of this Act, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) REPORT TO CONGRESS BY THE ADVISORY COMMITTEE.—The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of the President's decision to submit a report to the Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but not later than August 1, 1999, a written report that contains—

(A) its views regarding the progress that has been made in negotiations to achieve the purposes, policies, and objectives of this Act; and

(B) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(4) REPORTS MAY BE CLASSIFIED.—The reports submitted to the Congress under paragraphs (2) and (3), or any portion of the reports, may be classified to the extent the President determines appropriate.

(5) EXTENSION DISAPPROVAL RESOLUTIONS.—(A) For purposes of this subsection, the term "extension disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the ____ disapproves the request of the President for the extension, under section 3(c)(1)(B)(i) of the Trade Agreements Authority Act of 1995, of the provisions of section 151 of the Trade Act of 1974 to any implementing bill submitted with respect to any trade agreement entered into under section 3(b) of the Trade Agreements Authority Act of 1995 after December 15, 1999.", with the blank space being filled with the name of the resolving House of the Congress.

(B) Extension disapproval resolutions—

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be jointly referred, in the House of Representatives, to the Committee on Ways and Means and the Committee on Rules.

(C) The provisions of sections 152 (d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192 (d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution after December 14, 1999.

SEC. 4. CONSULTATIONS.

(a) NOTICE AND CONSULTATION BEFORE NEGOTIATION.—The President, at least 90 calendar days before initiating negotiations on any agreement that is subject to the provisions of 3(b), shall—

(1) provide written notice to the Congress of the President's intent to enter into the negotiations and set forth therein the date the President intends to initiate such negotiations, the specific United States objectives for the negotiations, and whether the President intends to seek an agreement, or changes to an existing agreement; and

(2) before and after submission of the notice, consult regarding the negotiations with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and such other committees of the House and Senate as the President deems appropriate.

(b) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO.—

(1) CONSULTATION.—Before entering into any trade agreement under section 3(b), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement.

(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, and objectives of this Act; and

(C) all matters relating to the implementation of the agreement under section 5, including whether the agreement includes subject matter for which supplemental implementing legislation may be required which is not subject to trade authorities procedures.

(c) ADVISORY COMMITTEE REPORTS.—The report required under section 135(e)(1) of the Trade Act of 1974 regarding any trade agreement entered into under section 3 (a) or (b) of this Act shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 5(a)(1)(A) of the President's intention to enter into the agreement.

SEC. 5. IMPLEMENTATION OF TRADE AGREEMENTS.

(a) IN GENERAL.—

(1) NOTIFICATION AND SUBMISSION.—Any agreement entered into under section 3(b) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which the President enters into the trade agreement, notifies the House of Representatives and the Senate of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) within 60 days after entering into the agreement, the President submits to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the agreement;

(C) after entering into the agreement, the President submits a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill described in section 3(b)(3);

(ii) a statement of any administrative action proposed to implement the trade agreement; and

(iii) the supporting information described in paragraph (2); and

(D) the implementing bill is enacted into law.

(2) SUPPORTING INFORMATION.—The supporting information required under paragraph (1)(C)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, and objectives of this Act; and

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i), and why and to what extent the agreement does not achieve other applicable purposes, policies, and objectives;

(II) whether and how the agreement changes provisions of an agreement previously negotiated;

(III) how the agreement serves the interests of United States commerce; and

(IV) why the implementing bill and proposed administrative action is required to carry out the agreement.

(b) LIMITATIONS ON TRADE AUTHORITIES PROCEDURES.—

(1) FOR LACK OF CONSULTATIONS.—(A) The trade authorities procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 3(b) if both Houses of Congress separately agree to a procedural disapproval resolution within any 60-day period.

(B) For purposes of this paragraph, the term "procedural disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to consult with the Congress on trade negotiations and trade agreements in accordance with section 4(b) of the Trade Agreements Authority Act of 1995 and, therefore, the provisions of section 151 of the Trade Act of 1974 shall not apply to any implementing bill submitted with respect to any trade agreement entered into under section 3(b) of the Trade Agreements Authority Act of 1995, if, during the 60-day period beginning on the date on which this resolution is agreed to by the _____, the _____ agrees to a procedural disapproval resolution (within the meaning of section 5(b)(2)(B) of that Act).", with the first blank space being filled with the name of the resolving House of the Congress and the second blank space being filled with the name of the other House of the Congress.

(2) PROCEDURES FOR CONSIDERING RESOLUTIONS.—(A) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules;

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules; and

(III) may not be amended by either Committee; and

(ii) in the Senate shall be original resolutions of the Committee on Finance.

(B) The provisions of section 152 (d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192 (d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to procedural disapproval resolutions.

(C) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules.

(c) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (b) of this section and section 3(c) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

SEC. 6. TREATMENT OF CERTAIN TRADE AGREEMENTS.

(a) EXTENDED NEGOTIATIONS IN THE URUGUAY ROUND.—Notwithstanding section 3(b)(2) and section 5(b), the provisions of section 4(a) shall not apply to an agreement which results from negotiations that were commenced before the date of the enactment of this Act, if the agreement is directly related to the principal negotiating objectives set forth in section 135 of the Uruguay Round Implementation Act (19 U.S.C. 3555).

(b) AGREEMENT WITH CHILE.—If an agreement to which section 3(b) applies which provides for the accession of Chile to the North American Free Trade Agreement is entered into with Chile after the date of the enactment of this Act and results from negotiations that were commenced before such date of enactment—

(1) the applicability of the trade authorities procedures to such agreement shall be determined without regard to the requirements of section 4(a); and

(2) if such agreement is entered into before March 15, 1996, section 5(a)(1)(A) shall be applied by substituting "30" for "90".

SEC. 7. ADDITIONAL PROCLAMATION AUTHORITY.

The United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note) is amended by adding at the end the following new section:

"SEC. 9. ADDITIONAL PROCLAMATION AUTHORITY.

"(a) ELIMINATION OR MODIFICATIONS OF DUTIES.—The President is authorized to proclaim elimination or modification of any existing duty as the President determines is necessary to exempt any article from duty if—

"(1) that article is wholly the growth, product, or manufacture of the West Bank or Gaza Strip or a qualifying industrial zone or is a new or different article of commerce that has been grown, produced, or manufactured in the West Bank or Gaza Strip or a qualifying industrial zone;

"(2) that article is imported directly from the West Bank, Gaza Strip, Israel, or a qualifying industrial zone; and

"(3) the sum of—

"(A) the cost or value of the materials produced in the West Bank, Gaza Strip, Israel, or a qualifying industrial zone, plus

"(B) the direct costs of processing operations performed in the West Bank, Gaza Strip, Israel, or a qualifying industrial zone,

is not less than 35 percent of the appraised value of the product at the time it is entered into the United States.

For purposes of determining the 35 percent content requirement contained in paragraph (3)(B), the cost or value of materials which are used in the production of an article in the West Bank or Gaza Strip or qualifying industrial zone, and are the products of the United States, may be counted in an amount up to 15 percent of the appraised value of the article.

"(b) TREATMENT AS ARTICLES OF ISRAEL.—The President is authorized to proclaim that articles may be treated as though they were articles of Israel for the purposes of the Agreement even if shipped to the United States from the West Bank or Gaza Strip or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement.

"(c) TREATMENT OF COST OR VALUE OF MATERIALS.—The President is authorized to proclaim that the cost or value of materials produced in the West Bank or Gaza Strip or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement, and the direct costs of processing operations performed in the West Bank or Gaza Strip or

a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

"(d) APPLICABILITY OF CERTAIN PROVISIONS OF AGREEMENT.—For purposes of this section, the provisions of paragraphs (2) through (9) of Annex 3 of the Agreement shall apply mutatis mutandis.

"(e) DEFINITION.—For purposes of this subsection, a 'qualifying industrial zone' means any area encompassing portions of the territory of Israel and Jordan or Israel and Egypt designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes, that has been specified by the President as a qualifying industrial zone.".

SEC. 8. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Title I of the Trade Act of 1974 (19 U.S.C. 2111 and following) is amended as follows:

(1) Section 151(b)(1) (19 U.S.C. 2191(b)(1)) is amended by striking "or section 282 of the Uruguay Round Agreements Act" and inserting "section 282 of the Uruguay Round Agreements Act, or section 5 of the Trade Agreements Authority Act of 1995".

(2) Section 131 (19 U.S.C. 2151) is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking "section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988," and inserting "section 123 of this Act, section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988, or section 3 (a) or (b) of the Trade Agreements Authority Act of 1995,"; and

(ii) in paragraph (2), by inserting "or section 3 (a) or (b) of the Trade Agreements Authority Act of 1995" after "1988";

(B) in subsection (b), by inserting "of the Omnibus Trade and Competitiveness Act of 1988 or section 3(a)(3)(A) of the Trade Agreements Authority Act of 1995" before the end period; and

(C) in subsection (c), by striking "of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988," and inserting "of this Act, section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or section 3 of the Trade Agreements Authority Act of 1995".

(3) Sections 132, 133(a), and 134(a) (19 U.S.C. 2152, 2153(a), and 2154(a)) are each amended by striking "or section 1102 of the Omnibus Trade and Competitiveness Act of 1988," each place it appears and inserting ", section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or section 3 of the Trade Agreements Authority Act of 1995,".

(4) Section 134(b) (19 U.S.C. 2154(b)) is amended by inserting "or section 3 of the Trade Agreements Authority Act of 1995" after "1988".

(5) Section 135(a)(1)(A) (19 U.S.C. 2155(a)(1)(A)) is amended by inserting "or section 3 of the Trade Agreements Authority Act of 1995" after "1988".

(6) Section 135(e) (19 U.S.C. 2155(e)) is amended—

(A) in paragraph (1), by inserting "or section 3 of the Trade Agreements Authority Act of 1995" after "1988" the first two places it appears, and by inserting "or section 5(a)(1)(A) of the Trade Agreements Authority Act of 1995" after "1988" the third place it appears; and

(B) in paragraph (2), by inserting "or section 2 of the Trade Agreements Authority Act of 1995" after "1988".

(b) APPLICATION OF SECTIONS 125, 126, AND 127 OF THE TRADE ACT OF 1974.—For purposes of applying sections 125, 126, and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137)—

(1) any trade agreement entered into under section 3 shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 3 shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 102 of the Trade Act of 1974.

I. INTRODUCTION

A. PURPOSES AND SUMMARY

H.R. 2371, as amended by the Committee, establishes special "fast track" provisions for the consideration of legislation to imple-

ment trade agreements. These special procedures, which were first enacted in 1974, have expired with respect to agreements entered into after December 15, 1993. The purpose of this special approval process has been to preserve the constitutional role and fulfill the legislative responsibility of Congress with respect to trade agreements. At the same time, the process ensures certain and expeditious action on the results of the negotiations and on the implementing bill with no amendments.

H.R. 2371, as amended by the Committee, would put in place special procedures for implementing trade agreements entered into between January 1, 1996 and December 31, 1999, with the opportunity for an extension to cover agreements entered into until December 31, 2001. These procedures are similar to the expired provisions, with modifications to clarify and narrow their application so that they do not apply to provisions that are not directly related to the trade negotiating objectives and are extraneous to the concluded trade agreement.

B. BACKGROUND AND NEED FOR LEGISLATION

Certain trade agreements cannot enter into force as a matter of U.S. law unless implementing legislation approving the agreement and any changes to U.S. law is enacted into law. Certain procedures, commonly referred to as "fast track," were first authorized in the Trade Act of 1974 in order to implement trade agreements. These procedures were first used with respect to the GATT Tokyo Round Agreements, which were approved and implemented in the Trade Agreements Act of 1979. The expedited procedures for the implementation of multilateral trade agreements have not been significantly altered since 1974 but were expanded in 1984 to apply to bilateral agreements. Extended through section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988, and modified to authorize the President to enter into bilateral trade agreements, fast track procedures were most recently used to implement the Uruguay Round Agreements of GATT and the North American Free Trade Agreement. That fast track negotiating authority as extended in 1991 and 1993 applied only with respect to new agreements entered into before December 15, 1993.

These special procedures required the President, before entering into any trade agreement, to consult with Congress and to provide Congress advance notice of his intent to enter into an agreement. After entering into the agreement, the President was required to submit the draft agreement, implementing legislation, and a statement of administrative action. The President also consulted with Congressional committees of jurisdiction on the content of the implementing bill. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

The Administration is beginning negotiations with Chile as to possible accession to the NAFTA. Because of the expiration of the provisions, the House is considering additional authority.

The Committee believes that fast track has been a highly effective tool in obtaining the passage of legislation implementing a wide variety of trade agreements. Because of these agreements, the Committee believes that the United States has been able to make

substantial progress in opening markets, lowering tariffs, and regulating and ending non-tariff barriers to trade. These agreements are extremely beneficial in creating much-needed jobs, stimulating the economy, raising the standard of living for American families, and reducing the deficit. The Committee believes that the only way that the United States can continue to develop these beneficial agreements is through the well-proven tool of fast track because it ensures certain and expeditious consideration of trade legislation while giving Congress a strong role to play in negotiating and implementing trade agreements. In addition, fast track gives U.S. trading partners confidence that an agreement agreed by the United States will not be reopened during the implementing process. Accordingly, H.R. 2371, as amended by the Committee, extends many of the same fast track provisions of the 1988 Act to future agreements.

C. LEGISLATIVE HISTORY

H.R. 2371, the Trade Agreements Authority Act of 1995, was introduced on September 22, 1995 by Chairman Archer, on behalf of himself, Mr. Crane, and Mr. Dreier. The bill was referred to the Committee on Ways and Means, and in addition to the Committee on Rules.

On September 22, 1995, the Committee on Ways and Means met to consider H.R. 2371. At that time, Mr. Crane offered an amendment in the nature of a substitute to H.R. 2371. In addition, Mr. Shaw offered an amendment, which would give the President proclamation authority to modify tariffs on products from the West Bank and Gaza Strip. The amendment was agreed to by voice vote. The Committee then ordered the bill favorably reported, as amended, by voice vote.

II. SECTION-BY SECTION SUMMARY OF THE PROVISIONS MODIFIED BY THE COMMITTEE ON WAYS AND MEANS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

SECTION 1: SHORT TITLE

Explanation of provision

The short title of the bill is the Trade Agreements Authority Act of 1995.

SECTION 2: TRADE NEGOTIATING OBJECTIVES

Present/expired law

Section 1101(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) set forth overall negotiating objectives for concluding trade agreements. These objectives were to obtain more open, equitable, and reciprocal market access, the reduction or elimination of barriers and other trade-distorting policies and practices, and a more effective system of international trading disciplines and procedures. Section 1102(b) set forth the following principle trade negotiating objectives: dispute settlement, transparency, developing countries, current account surpluses, trade and monetary coordination, agriculture, unfair trade practices, trade in services, intellectual property, foreign direct investment, safe-

guards, specific barriers, worker rights, access to high technology, and border taxes.

Explanation of provision

Section 2 would establish the following overall negotiating objectives: obtaining more open, equitable, and reciprocal market access, obtaining the reduction or elimination of barriers and other trade-distorting policies and practices, further strengthening the system of international trading disciplines and procedures, fostering economic growth and full employment in the U.S. and the global economy, and developing, strengthening, and clarifying rules and disciplines on restrictive or trade-distorting import and export practices.

In addition, section 2 would establish the principal trade negotiating objectives for concluding trade agreements, as follows: specific barriers and other trade distortions (policies and practices directly related to trade that distort or impede U.S. imports or exports), services, foreign direct investment, intellectual property (including enforcement), and transparency. Moreover, in determining whether to enter into negotiations with a particular country, the President would be required to take into account whether that country has implemented its obligations under the Uruguay Round Agreements.

Reason for change

In approving the list of primary negotiating objectives in H.R. 2371, as amended, the Committee intended to update the objectives from the 1988 Act and to make them less controversial. Specifically, some objectives were outdated because they referred to the Uruguay Round. Other objectives were made more broad to encompass more than one objective from the 1988 Act and to include those practices and policies that are directly related to trade and serve as trade barriers or distortions to trade. For instance, it is the Committee's intent that the negotiating objective concerning specific barriers to trade includes issues such as safeguards, dispute settlement, unfair trade practices, access to high technology, government procurement, technical standards, sanitary and phytosanitary standards, and border taxes.

In addition, the language covers any tariff or non-tariff barrier as well as any policy or practice that is directly related to trade, regardless of whether the barrier is imposed at the foreign border or at some other point. Moreover, H.R. 2371, as amended, addresses policies and practices, not merely a law "on its face." The deciding factor is whether a policy or practice has the *de facto* effect of impeding U.S. imports or exports, not whether the law is only a *de jure* barrier. In addition, the concept "policy or practice" covers barriers imposed under, for example, a regulatory, administrative, adjudicatory, and investigatory exercise of any level of foreign government authority, and is not limited to statutory barriers.

Finally, it is the Committee's intention that the phrase "to obtain more open and fair conditions of trade by reducing or eliminating specific tariff and nontariff barriers" applies to barriers imposed by foreign governments as well as domestic barriers, if any.

With respect to the principal trade negotiating objective concerning specific barriers to trade, the Committee intends this language to include those practices and policies that are directly related to trade and serve as trade barriers or distortions to trade, as noted above. However, certain policies and practices, such as those governing labor, the environment, and bribery and corruption, may in certain circumstances decrease market opportunities for U.S. exports or distort or impede U.S. exports or imports. Those aspects of these policies and practices may accordingly be included in trade agreements whose implementation qualifies for fast track. In addressing whether foreign government policies and practices are trade related, the Committee intends that the USTR consult closely with the Congress and the private sector in making these determinations.

Of course, the Committee recognizes and expects that the President will take into account the relationship between trade agreements and other important priorities of the U.S., and strive to ensure that trade agreements entered into by the U.S. complement and reinforce other policy goals. Negotiations under the executive authorities of the President may occur on other policy goals and objectives, the results of which may or may not require changes in U.S. law. However, fast-track implementing procedures are reserved for measures that are (1) directly related to trade; (2) serve as trade barriers or distortions; and (3) have been subject to consultations with the Congress and the private sector. By contrast, fast track procedures are not intended to be used to implement other, more general policy goals.

SECTION 3: TRADE AGREEMENTS AUTHORITY

Present/expired law

Tariff proclamation authority.—Section 1102(a) provided authority to the President to proclaim modifications in duties without the need for Congressional approval, subject to certain limitations. Specifically, for rates that exceed 5 percent ad valorem, the President could not reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase had to be approved by Congress.

Staging authority required that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging was not required if the International Trade Commission determined there was no U.S. production of that article.

Negotiation of bilateral agreements.—Section 1102(c) of the 1988 Act set forth three requirements for the negotiation of a bilateral agreement:

The foreign country must request the negotiation of the bilateral agreement;

The agreement must make progress in meeting applicable U.S. trade negotiating objectives; and

The President must provide written notice of the negotiations to the Committee on Ways and Means and the Senate

Committee on Finance and consult with these committees. The negotiations could proceed unless either Committee disapproved the negotiations within 60 calendar days prior to the 90 calendar day advance notice required of entry into an agreement (described below).

Negotiation of multilateral non-tariff agreements.—With respect to multilateral agreements, section 1102(b) provided that whenever the President determines that any barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, he may enter into a trade agreement with the foreign countries involved. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion.

Provisions qualifying for fast track procedures.—Section 1103(b)(1)(A) of the 1988 Act provided that fast track applied to implementing bills submitted with respect to any trade agreements entered into under the statute. Section 151(b)(1) of the Trade Act of 1974 further defined "implementing bill" as a bill containing provisions "necessary or appropriate" to implement the trade agreement, as well as provisions approving the agreement and the statement of administrative action.

Time period.—The authority applied with respect to agreements entered into before June 1, 1991, and until June 1, 1993 unless Congress passed an extension disapproval resolution. The authority was then extended to cover the Uruguay Round of multilateral negotiations under the General Agreement on Tariffs and Trade.

Explanation of provision

Proclamation authority.—Section 3(a) would provide the President the authority to proclaim, without Congressional approval, certain duty and modifications in a manner very similar to the expired provision. Specifically, for rates that exceed 5 percent ad valorem, the President would not be authorized to reduce any rate of duty to a rate less than 50 percent of the rate of the duty applying on the date of enactment. Rates at or below 5 percent could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase would have to be approved by Congress.

Staging authority would require that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging would not be required if the International Trade Commission determined there is no U.S. production of that article.

Agreement on tariff and non-tariff barriers.—Section 3(b)(1) would authorize the President to enter into a trade agreement with a foreign country whenever he determined that any duty or other import restriction or any other barrier to or distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect. The agreement must provide for the

reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion. No distinction would be made between bilateral and multilateral agreements.

Conditions.—Section 3(b)(2) would provide that the special implementing bills procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in section 2 and the President satisfies the consultation requirements, set forth in section 4.

Bills qualifying for trade authorities procedures.—Section 3(b)(3)(A) would provide that bills implementing trade agreements may qualify for fast track procedures only if those bills consist solely of provisions directly related to principal trade negotiating objectives set forth in section 2(b)(3)) if they are necessary for the operation or implementation of trade agreements, and provisions approving the agreement and statement of administrative action.

Section 3(b)(3)(B) would provide that fast track may also apply to provisions that define and clarify the operation and effect of U.S. law (e.g., the relationship between federal and state law, preclusion of private right of action, judicial procedures, and establishment of administrative, consulting, and reporting mechanisms to carry out U.S. obligations) and provisions necessary to comply with budget offset requirements. Finally, section 3 would authorize the President to negotiate certain tariff reductions without the need for implementation legislation.

Time period.—Sections 3(a)(1)(A) and 3(b)(1) would extend fast track authority to agreements entered into between January 1, 1996 and December 31, 1999. In addition, a 2-year extension (until 2001) would be permitted unless Congress passed a disapproval resolution, as described under section 3(c).

Reason for change

H.R. 2371, as amended by the Committee, extends to the President the same authority to proclaim tariff modifications as under the 1988 Act. In addition, H.R. 2371, as amended by the Committee, would apply the same substantive and procedural requirements to all types of agreements, thus ending the special rules for bilateral versus multilateral agreements.

With respect to the requirements for bills qualifying for fast track, it is the Committee's intent to extend authority to the President to negotiate agreements that would be subject to the special procedures similar to that given to past Administrations. At the same time, the Committee's intent is to tighten the process so as to avoid including non-trade provisions as well as provisions that are trade-related but are extraneous to the trade agreement. The Committee has been concerned that a number of provisions that were not strictly trade-related and that were not related to implementing the trade agreement at hand have been included in past implementing bills.

The Committee believes that even as important as fast track is, it is just as important to make it as narrow and tailored as possible so as not to unnecessarily intrude on normal legislative procedures. Fast track is an exception to the rule that is permitted only because of the recognition of the compelling need to consider quickly

and efficiently legislation to implement trade agreements. The reason for limiting fast track to trade issues only is historically and constitutionally based. The President and the Congress both have important powers with respect to trade and foreign affairs issues. Therefore, trade agreements do not readily fit the legislative model used to consider other types of legislation. Fast track has been developed to assure that trade relations with other countries are handled expeditiously and efficiently with the involvement of the executive and legislative branches. In so doing, the Committee has always recognized that fast track is a limited rule that should apply only to meet the special requirements of trade agreements. Accordingly, the Committee believes that the exception should not be so broad as to swallow the rule. To do so would usurp a broad range of Congressional authority and prerogatives to make laws in these areas. Accordingly, the general rule of H.R. 2371, as amended by the Committee, would permit the extension of fast track procedures to bills consisting *solely* of provisions directly related to the principle negotiating objectives set forth in the bill if they are necessary for the operation and implementation of trade agreements, as well as provisions approving the agreement and the statement of administrative action.

The Committee intends that "provisions necessary for the operation and implementation of trade agreements" are those provisions that are necessary for implementation to take place. The Committee has further clarified in H.R. 2371, as amended, that provisions that define and clarify the operation and effect of the trade agreement under U.S. law may qualify for the special provisions although they are not directly related to the negotiating objectives. Such provisions include the relationship between federal and state law, the preclusion of private right of action, judicial procedures, and the establishment of administrative, consulting, and reporting mechanisms to carry out U.S. obligations. The Committee intends this to be a limited exception. In addition, provisions necessary to comply with budget offset requirements would qualify for the special procedures. The Committee interprets the criteria for provisions to qualify under fast track to include provisions to address sovereignty concerns, procedures to address countries that delay accession to the agreement, provisions to accelerate phaseouts of tariffs, and Congressional guidance for future negotiations conducted under the auspices of the agreement. In addition, H.R. 2371, as amended, permits the use of fast track procedures to amend U.S. laws that must be changed in order for the United States to be in compliance with the agreement.

The Committee emphasizes that fast track should not apply to proposals to make major changes to U.S. law merely because they may be addressed in the agreement. Provisions included in fast track should instead meet the tests set forth in the statutory language.

The Committee further emphasizes that the requirements of H.R. 2371, as amended, are very similar to those of the 1988 Act but are more precise. The criteria for including provisions within an implementing bill under the expired fast track had been viewed more conservatively by previous Administrations, who were operating to a great degree as if the more precise language were in place

and understood that the use of fast track procedures was to be circumscribed. Specifically, it is the Committee's view that the expired fast track procedures should never have been interpreted so broadly as to include extraneous matters in trade agreements. The Congress recognized that side agreements did not have status equivalent to trade agreements and therefore authorized participation in such trade agreements and provided funds for such participation separately from approval of the trade agreement.

Accordingly, H.R. 2371 clarifies what the appropriate use of fast track always has been to reflect the understanding of these previous Administrations: a limited authority used to implement trade agreements and not extraneous matters. The Committee believes that this language provides the Administration with more than adequate flexibility to negotiate trade agreements. The Committee emphasizes that fast track is not appropriate for other policy objectives that are negotiated in conjunction with trade agreements. Otherwise, under such an interpretation, the Administration could conduct negotiations concerning issues such as bribery and corruption and seek to implement under fast track non-trade changes relating to U.S. antitrust laws, the Foreign Corrupt Practices Act, and taxation of foreign-source income. The Committee strongly opposes such a use of fast track. Accordingly, other policy goals and objectives, such as agreements negotiated as "side agreements," authorization for participation in organizations established under such side agreements, or funding for such participation, could no longer be approved under fast track.

SECTION 4: CONSULTATIONS

Present/expired law

Section 102 of the Trade Act of 1974 and sections 1102(d) and 1103 of the 1988 Act set forth the fast track requirements. These provisions required the President, before entering into any trade agreement, to consult with Congress as to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes, policies, and objectives, and all matters relating to agreement implementation. In addition, before entering into an agreement, the President was required to give Congress at least 90 calendar days advance notice of his intent. The purpose of this period was to provide the Congressional committees of jurisdiction an opportunity to review the proposed agreement before it was signed, to determine the changes in U.S. laws that would be necessary or appropriate to implement the obligations under the agreement, and to meet with Administration officials to develop the text of an acceptable implementing bill.

Section 135(e) of the Trade Act of 1974 required that the Advisory Committee for Trade Policy and Negotiations meet at the conclusion of negotiations for each trade agreement and provide a report as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives of section 1101 of the 1988 Act. The report was due not later than the date on which the President notified Congress of his intent to enter into an agree-

ment. With regard to the Uruguay Round, the report was due 30 days after the date of notification.

Explanation of provision

Section 4 of H.R. 2371, as amended by the Committee, would establish a number of requirements that the President consult with Congress. Specifically, section 4(a) would require the President to provide written notice and consult with the relevant committees at least 90 calendar days prior to entering into negotiations. As with the expired procedures, fast track would not apply to an implementing bill if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration has failed to consult with Congress.

In addition, section 4(b) would require the President, before entering into any trade agreement, to consult with the relevant committees concerning the nature of the agreement, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives of H.R. 2371, as amended, and all matters relating to implementation under section 5, including whether the agreement includes subject matter for which supplemental implementing legislation may be required which is not subject to fast track.

Finally, section 4(c) would require that the report of the Advisory Committee for Trade Policy and Negotiations under section 135(e)(1) of the Trade Act of 1974 be provided not later than 30 days after the date on which the President notifies Congress of his intent to enter into the agreement under section 5(a)(1)(A).

Reason for change

The Committee believes that the consultation requirements of the expired fast track authority has been effective in allowing Congress to participate in the policy decisions surrounding the negotiation of trade agreements. Accordingly, H.R. 2371, as amended by the Committee, would continue these provisions in similar form.

H.R. 2371, as amended, treats all trade agreements in the same manner for consultation purposes and does not differentiate between bilateral and multilateral agreements. Accordingly, the bill would extend to all negotiations, and not just to bilateral negotiations as in the 1988 Act, the requirement that the President provide prior written notice of negotiations.

Finally, H.R. 2371, as amended, permits the Advisory Committee for Trade Policy and Negotiations to submit its report after the President notifies his intent to enter into an agreement, as opposed to requiring the report be filed on the same day as that notification. The Committee believes that the additional time would contribute to the usefulness of the report.

SECTION 5: IMPLEMENTATION OF TRADE AGREEMENTS

Present/expired law

Before entering into the draft agreement, the President was required to give Congress 90 days advance notice (120 days for the Uruguay Round) to provide an opportunity for revision before signature. After entering into the agreement, the President was required to submit formally the draft agreement, implementing legis-

lation, and a statement of administrative action. Once the bill was formally introduced, there was no opportunity to amend any portion of the bill—whether on the floor or in committee. Consequently, before the formal introduction took place, the committees of jurisdiction would hold "mock hearings," "mock mark-up" sessions and a "mock conference" with the Senate committees of jurisdiction in order to develop a draft implementing bill together with the Administration and to make their concerns known to the Administration before it introduced the legislation formally.

After formal introduction of the implementing bill, the House committees of jurisdiction had 45 legislative days to report the bill, and the House was required to vote on the bill within 15 legislative days after the measure was reported or discharged from the committees. Fifteen additional days were provided for Senate committee consideration (assuming the implementing bill was a revenue bill), and the Senate floor action was required within 15 additional days. Accordingly, the maximum period for Congressional consideration of an implementing bill from the date of introduction was 90 legislative days. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

Finally, section 1103(d) of the 1988 Act specified that the fast track rules were enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

Explanation of provision

Under section 5(a) of H.R. 2371, as amended by the Committee, the President would be required, at least 90 days before entering into an agreement, to notify Congress of his intent to enter into the agreement. Section 5(a) also would establish a new requirement that the President, within 60 days of signing an agreement, submit to Congress a preliminary list of existing laws that he considers would be required to bring the United States into compliance with agreement. Section 5(b) would provide that fast track would not apply if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration failed to consult with Congress.

Most of the remaining provisions are identical to the expired law. Specifically, section 5(a) would require the President, after entering into agreement, to submit formally the draft agreement, the implementing legislation, and a statement of administrative action to Congress, and there would be no time limit to do so. The procedures of section 151 of the Trade Act of 1974 would then apply. Specifically, on the same day as the President formally submits the legislation, the bill would be introduced (by request) by the Majority Leaders of the House and the Senate. After formal introduction of the legislation, the House committees of jurisdiction would have 45 legislative days to report the bill. The House would be required to vote on bill within 15 legislative days after the measure was reported or discharged from the committees. Fifteen additional days would be provided for Senate committee consideration (assuming the implementing bill was a revenue bill), and Senate floor action would be required within 15 additional days. Accordingly, the max-

imum period for Congressional consideration of the implementing bill from the date of introduction would be 90 legislative days.

As with the expired provisions, once the bill has been formally introduced, no amendments would be permitted either in Committee or floor action, and a straight "up or down" vote would be required. Of course, before formal introduction the bill could be developed by the committees of jurisdiction together with the Administration during the informal Committee "mock mark-up" process.

Finally, as with the expired provision, section 5(c) specifies that sections 5(b) and 3(c) are enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

Reason for change

The procedures established under H.R. 2371, as amended, are mainly identical to those of the 1988 Act. The Committee views these procedures as having been effective in the past because they permit Congress to participate in the drafting of the implementing bill.

As with the past provision, there would be no deadline for the submission of the legislation by the President once an agreement has been concluded because the Committee intends that the Committees and the Administration have as much time as necessary to consider the content of the legislation. After the formal introduction, certain deadlines are appropriate because Congress has already conducted its process informally. The Committee believes that the informal "mock mark-up" process provides the Congress and the private sector ample opportunity to develop the proposed legislation and to provide their views to the Administration. The Committee encourages and expects the Administration to continue its practice of considering carefully the comments made during this informal process and of making no changes to the legislation beyond those approved by the Committees. If the Administration must make changes to reconcile differing recommendations by the relevant committees, the Committee expects that the Administration will continue to consult with the affected committees.

H.R. 2371 would add a new procedural step requiring that the President submit to Congress, within 60 days of signing an agreement, a preliminary list of existing laws that he considers would be required to bring the United States into compliance with agreement. This requirement has been added out of concern that in the past, Congress has not always been timely apprised of the changes to U.S. law that the Administration believes are required. This information is of vital importance to the Committee in its deliberations.

SECTION 6: TREATMENT OF CERTAIN TRADE AGREEMENTS

Present/expired law

No provision.

Explanation of provision

Section 6 would provide an exception for the Chilean NAFTA accession negotiations, so that the prenegotiation consultation re-

quirement would not apply and that a 30-day requirement would apply for notification of intent to enter into an agreement, instead of the general 90-day requirement. In addition, the prenegotiation consultation requirement would not apply to extended negotiations in the Uruguay Round.

Reason for change

The Committee recognizes the importance of negotiations for Chilean accession to the NAFTA as well as the extended negotiations under the Uruguay Round. Because of the timing of these negotiations, it may not be possible for the Administration to comply formally with all of the consultation and notification requirements of the Trade Agreements Authority Act. Accordingly, the Committee support waiving these requirements with regard to these agreements only. However, the Committee expects that the Administration will continue to consult closely with the Committees throughout the negotiations so that the Committees may be informed about the issues and communicate any concerns.

SECTION 7: ADDITIONAL PROCLAMATION AUTHORITY

Present/expired law

No provision.

Explanation of provision

Section 7 would provide the President proclamation authority to modify tariffs on products from the West Bank and Gaza Strip. The provision would apply to areas designated as industrial parks between the Gaza Strip and Israel and between the West Bank and Israel.

Reason for change

This provision was added at the request of the Administration. The Committee believes that reducing tariffs in these zones is important to the peace process, will increase employment, and will stimulate the economy of the region.

III. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made relative to the votes of the Committee in its consideration of the bill, H.R. 2371.

MOTION TO REPORT THE BILL

The bill, H.R. 2371, as amended, was ordered favorably reported by voice vote, with a quorum present.

IV. BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF THE CONGRESSIONAL BUDGET OFFICE

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECT

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee agrees with cost estimates fur-

nished by the Congressional Budget Office on H.R. 2371, as amended, set forth below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1995.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2371, the Trade Agreements Authority Act of 1995, as amended and approved by the Committee on Ways and Means on September 21, 1995. CBO estimates that this bill would cause a negligible reduction in governmental receipts.

Before their expiration on June 1, 1993, sections 1102 and 1103 of the Omnibus Trade and Competitiveness Act of 1988 granted the President the authority to enter into multilateral and bilateral trade agreements. The President could reduce certain tariffs by proclamation within specified bounds prescribed by the law, and for provisions subject to Congressional approval, Congress could not amend implementing legislation once it was formally introduced. This consideration process was known as the "fast track" procedures. PL 103–40 temporarily extended these provisions through April 16, 1994, for any trade agreement resulting from the Uruguay Round negotiations taking place under the General Agreement on Tariffs and Trade.

Because the fast track procedures have expired, Congress can amend any legislation implementing trade agreements entered into since the expiration and faces no time constraints on the consideration. In addition, the President no longer has the authority to implement certain tariff reductions of trade agreements without Congressional approval. H.R. 2371, as amended by committee, would restore the fast track procedures through December 15, 1999 (or through December 31, 2001, in the absence of an extension disapproval resolution by either the House or the Senate). Beginning on January 1, 1996, the President could enter into an agreement (as long as he notified Congress of his intention 90 days beforehand), utilize his proclamation authority for certain tariff reductions, and have the legislation considered by Congress under the fast track procedures. Finally, section 9 of the bill, as amended by committee, grants to the President the authority to eliminate the existing duty on articles imported from the West Bank, Gaza Strip, and qualifying industrial (designated territory of Israel and Jordan or Israel and Egypt).

Because CBO assumes that, in general, the Administration's use of the fast track authority would be accompanied by implementing legislation, the budgetary impact of these provisions would be scored with the subsequent legislation. However, CBO believes that the Administration intends to utilize the proclamation authority established in section 9 of the bill, as amended by committee, without further legislation. According to US census data, collections for the West Bank, Gaza Strip and the qualified industrial zones currently total less than $1,000 annually. Therefore, the elimination of such

duties by Presidential proclamation would lead to a negligible reduction in revenues.

If you wish further details, please feel free to contact me or your staff may wish to contact Stephanie Weiner.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the bill does not provide new budget, spending, or credit authority. The bill may result in a decrease in tariff revenues but would have no effect on tax revenues.

V. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to subdivision (A) of clause 2(l)(3) of rule XL of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's oversight activities concerning customs and tariff matters, import trade matters, and specific trade-related issues that the Committee concluded that it was appropriate to enact the provisions contained in the bill.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

With respect to subdivision (D) of clause 2(l)(4) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in this bill.

C. INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill are not expected to have an overall inflationary impact on prices and costs in the operation of the national economy.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 9 OF THE UNITED STATES-ISRAEL FREE TRADE AREA IMPLEMENTATION ACT OF 1985

SEC. 9. ADDITIONAL PROCLAMATION AUTHORITY.

(a) ELIMINATION OR MODIFICATIONS OF DUTIES.—The President is authorized to proclaim elimination or modification of any existing duty as the President determines is necessary to exempt any article from duty if—

(1) that article is wholly the growth, product, or manufacture of the West Bank or Gaza Strip or a qualifying industrial zone or is a new or different article of commerce that has been grown, produced, or manufactured in the West Bank or Gaza Strip or a qualifying industrial zone;

(2) that article is imported directly from the West Bank, Gaza Strip, Israel, or a qualifying industrial zone; and

(3) the sum of—

(A) the cost or value of the materials produced in the West Bank, Gaza Strip, Israel, or a qualifying industrial zone, plus

(B) the direct costs of processing operations performed in the West Bank, Gaza Strip, Israel, or a qualifying industrial zone,

is not less than 35 percent of the appraised value of the product at the time it is entered into the United States.

For purposes of determining the 35 percent content requirement contained in paragraph (3)(B), the cost or value of materials which are used in the production of an article in the West Bank or Gaza Strip or qualifying industrial zone, and are the products of the United States, may be counted in an amount up to 15 percent of the appraised value of the article.

(b) TREATMENT AS ARTICLES OF ISRAEL.—The President is authorized to proclaim that articles may be treated as though they were articles of Israel for the purposes of the Agreement even if shipped to the United States from the West Bank or Gaza Strip or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement.

(c) TREATMENT OF COST OR VALUE OF MATERIALS.—The President is authorized to proclaim that the cost or value of materials produced in the West Bank or Gaza Strip or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement, and the direct costs of processing operations performed in the West Bank or Gaza Strip or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

(d) APPLICABILITY OF CERTAIN PROVISIONS OF AGREEMENT.—For purposes of this section, the provisions of paragraphs (2) through (9) of Annex 3 of the Agreement shall apply mutatis mutandis.

(e) DEFINITION.—For purposes of this subsection, a "qualifying industrial zone" means any area encompassing portions of the territory of Israel and Jordan or Israel and Egypt designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes, that has been specified by the President as a qualifying industrial zone.

TRADE ACT OF 1974

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

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CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

SEC. 131. ADVICE FROM INTERNATIONAL TRADE COMMISSION.

(a) LISTS OF ARTICLES WHICH MAY BE CONSIDERED FOR ACTION.—

(1) In connection with any proposed trade agreement under [section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988,] *section 123 of this Act, section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988, or section 3 (a) or (b) of the Trade Agreements Authority Act of 1995,* the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the "Commission") with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

(2) In connection with any proposed trade agreement under section 1102 (b) or (c) of the Omnibus Trade and Competitiveness Act of 1988 *or section 3 (a) or (b) of the Trade Agreements Authority Act of 1995,* the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

(b) ADVICE TO PRESIDENT BY COMMISSION.—Within 6 months after receipt of a list under subsection (a) or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judgment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the minimum period provided for in section 1102(a)(3)(A) *of the Omnibus Trade and*

Competitiveness Act of 1988 or section 3(a)(3)(A) of the Trade Agreements Authority Act of 1995.

(c) ADDITIONAL INVESTIGATIONS AND REPORTS REQUESTED BY THE PRESIDENT OR THE TRADE REPRESENTATIVE.—In addition, in order to assist the President in his determination whether to enter into any agreement under section 123 [of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988,] *of this Act, section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or section 3 of the Trade Agreements Authority Act of 1995* or how to develop trade policy, priorities or other matters (such as priorities for actions to improve opportunities in foreign markets), the Commission shall make such investigations and reports as may be requested by the President or the United States Trade Representative on matters such as effects of modification of any barrier to (or other distortion of) international trade on domestic workers, industries or sectors, purchasers, prices and quantities of articles in the United States.

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SEC. 132. ADVICE FROM EXECUTIVE DEPARTMENTS AND OTHER SOURCES.

Before any trade agreement is entered into under section 123 of this Act [or section 1102 of the Omnibus Trade and Competitiveness Act of 1988,], *section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or section 3 of the Trade Agreements Authority Act of 1995*, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate. Such advice shall be prepared and presented consistent with the provisions of Reorganization Plan Number 3 of 1979, Executive Order Number 12188 and section 141(c).

SEC. 133. PUBLIC HEARINGS.

(a) OPPORTUNITY FOR PRESENTATION OF VIEWS.—In connection with any proposed trade agreement under section 123 of this Act [or section 1102 of the Omnibus Trade and Competitiveness Act of 1988,], *section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or section 3 of the Trade Agreements Authority Act of 1995*, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 131, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings. When appropriate, such procedures shall apply to the development of trade policy and priorities.

* * * * * * *

SEC. 134. PREREQUISITES FOR OFFERS.

(a) In any negotiation seeking an agreement under section 123 of this Act [or section 1102 of the Omnibus Trade and Competitive-

ness Act of 1988,], *section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or section 3 of the Trade Agreements Authority Act of 1995,* the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this title, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) in the course of negotiating any trade agreement under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 *or section 3 of the Trade Agreements Authority Act of 1995,* and in determining the nature and scope of such offers, the President shall take into account any advice or information provided, or reports submitted, by—

(1) * * *

* * * * * * *

SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.

(a) IN GENERAL.—

(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this title or section 1102 of the Omnibus Trade and Competitiveness Act of 1988 *or section 3 of the Trade Agreements Authority Act of 1995*;

* * * * * * *

(e) MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS.—

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 *or section 3 of the Trade Agreements Authority Act of 1995,* to provide to the President, to Congress, and to the United States Trade Representative a report on

such agreement. Each report that applies to a trade agreement entered into under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 *or section 3 of the Trade Agreements Authority Act of 1995* shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 1103(a)(1)(A) of such Act of 1988 *or section 5(a)(1)(A) of the Trade Agreements Authority Act of 1995* of his intention to enter into that agreement.

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in section 1101 of the Omnibus Trade and Competitiveness Act of 1988 *or section 2 of the Trade Agreements Authority Act of 1995*, as appropriate.

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CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

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SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.

(a) * * *

(b) DEFINITIONS.—For purposes of this section—

(1) The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements, or with respect to an extension described in section 282(c)(3) of the Uruguay Round Agreements Act, submitted to the House of Representatives and the Senate under section 102 of this Act, section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988[, or section 282 of the Uruguay Round Agreements Act], *section 282 of the Uruguay Round Agreements Act, or section 5 of the Trade Agreements Authority Act of 1995* and which contains—

(A) * * *

* * * * * * *

DEMOCRATIC DISSENTING VIEWS

We oppose this legislation and regret that the Committee has ordered it favorable reported without the support of the Administration or any Democrat on the Committee. For many years, important trade issues such as this have been dealt with in a bipartisan manner by the Committee and great things have been accomplished in the process, culminating in the passage of the Uruguay Round Agreements Act last year. We believe that the Committee must continue to deal with international trade issues on a bipartisan basis for the United States to be able to pursue enlightened and sustainable trade policies in the future.

We recognize that fast track authority is essential for any President, Democrat or Republican, to be able to negotiate and implement trade agreements successfully. Unfortunately, the other side of the aisle believes that the fast track authority that has been used successfully since 1974 to implement five major trade agreements on a bipartisan basis is somehow deficient. We do not share that belief. The record speaks for itself—five major trade agreements brought before Congress under fast track, five major trade agreements successfully implemented on a fully bipartisan basis. We see no deficiencies in this record.

We believe that the Congress should grant to President Clinton and to future Presidents fast track negotiating authority that is effectively no less than the authority given to past Presidents. As Ambassador Kantor noted during the markup of this legislation, the starting point should be a simple question: What are we trying to fix? With all the success we've achieved, why are we tinkering? What is our goal? We know a formulation that has created hundreds of thousands of jobs and do not believe such a formulation should be altered without a compelling case to do so. Such a case has not been made.

Unfortunately, the fast track bill reported by the Committee has moved away from the tried and true formula of past fast track legislation and would unnecessarily limit future fast track authority. The bill potentially removes from the table entire categories of barriers and distortions faced by American companies overseas. It so circumscribes the provisions that can be included in a fast track implementing bill that previous major trade agreements, including the Tokyo Round, NAFTA, and the Uruguay Round, could not have been implemented either as a practical or political matter under the authority contained in the bill reported.

The primary criticism of previous coverage of fast track implementing bills was inclusion of provisions without possibility of amendment to meet budgetary PAYGO requirements. Yet the reported bill, with good reason, does not change fast track coverage in this regard.

The reported bill would no longer permit "appropriate" measures to be included in fast track bills. Provisions regarded as "appropriate" to implement trade agreements were included in previous fast track bills both to gain political support and to enable proper administration of the trade statutes and Congressional oversight. These provisions have had bipartisan support in the Committee on Ways and Means. Why would we want to reduce that support, both within the Committee and for passage in the House, as well as to reduce the ability of agencies to administer the laws effectively or for Congress to oversee their implementation?

In sum, we believe that the reported bill unwisely reduces the ability and flexibility of the Committee to craft, on a bipartisan basis, future fast track bills. The effect of the bill is to limit ourselves in advance now on the content of agreements with particular countries and on the provisions that may be included in implementing bills several years from now. This is unnecessary and unwise, particularly since the bill requires consultation with the Committee before as well as during and after each negotiation, both on negotiating objectives for each agreement and on provisions to include in the implementing bill. The appropriate manner to decide the content of trade agreements and implementing bills is on a case-by-case basis taking into account the circumstances at the time.

Finally, we endorse the Administration's position, as reiterated by Ambassador Kantor during the markup:

> The President strongly supports extension of fast track negotiating authority;
>
> Fast track extension is essential to the continued expansion of American exports and the continued creation of American jobs;
>
> The current Republican proposal is too limited and is not acceptable;
>
> As an alternative, we would support simple reauthorization of the 1991 fast track legislation, that is, the identical authority given by Democratic Congresses to both President Reagan and President Bush;
>
> The President is committed to addressing labor and environment issues in the context of trade agreements.

In conclusion, we are deeply troubled by what has been reported by the Committee on future fast track authority. Such authority is essential to negotiate and implement trade agreements. Without it, there will be no further trade agreements and the benefits they bring for U.S. business, workers, and consumers. It continues to be our hope that a bipartisan solution for this legislation can be developed. We note that Chairman Archer has left open the door for further discussion on, and possible modification of, the Committee's reported bill before it goes to the floor as part of budget reconciliation. We stand ready to work for truly bipartisan legislation in this area.

SAM GIBBONS.
BARBARA B. KENNELLY.
HAROLD FORD.
CHARLES B. RANGEL.
ROBERT T. MATSUI.
L.F. PAYNE.
JIM MCDERMOTT.
SANDER LEVIN.
BENJAMIN L. CARDIN.
RICHARD E. NEAL.
WILLIAM J. COYNE.

DISSENTING VIEW OF REPRESENTATIVE KLECZKA

I oppose this legislation and regret that the Committee has ordered it favorably reported without the support of the Administration or any Democrat on the Committee.

More specifically, I am opposed to the passage of fast track authority, the principle negotiating objectives of which do not include promotion of respect for worker rights and labor standards.

I am also opposed to passage of fast track authority which does not include as a principal negotiating objective the promotion of compatibility between international trade and environmental policies. This compatibility should be consistent with environmental protection, sustainable development, and an open, equitable, and nondiscriminatory trading system based on fair and predictable rules.

I am further disappointed that the bill, by no longer permitting "appropriate" measures to be included in fast track bills, circumscribes that which can be included in a fast track bill such that provisions regarding issues of worker rights and the environment might not be included.

I stand with the President in his commitment that labor and environmental issues should be addressed in the context of trade agreements.

GERALD D. KLECZKA.

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